

Parvat Singh Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Sep-26-1989

Reported in : 1989(2)WLN305

Judge : Mohini Kapoor, J.

Appeal No. : S.B. Cr. Revision Petition No. 225 of 1989

Appellant : Parvat Singh

Respondent : State of Rajasthan

Disposition : Petition dismissed

Judgement :

Mohini Kapoor, J.

1. The petitioner was convicted by the Munsif and Judicial Magistrate, Neem-ka-Thana for the offence under Section 16/54(C) of the Rajasthan Excise Act and sentenced him to six months RI and a fine of Rs. 500/-. and in default of payment of fine to further suffer one month's RI This order passed on 5-1-1989, has been confirmed by the Additional Sessions Judge, Neem-ka-Thana in Criminal Appeal No. 1/89 by judgment dated 14-9-1989. Against this conviction and sentence, the petitioner has preferred this revision petition.

2. It may be mentioned here that the petitioner was found running a still in village Aspur when the Excise Inspector checked on 29-11-1983. About seven bottles of illicit liquor were found in the container in which the liquor was dripping from the tubs while there was wash in the container which was on the still. It may be stated that as all the facts are concerned the same stand proved by the statements of witnesses and it cannot be said there is any reason to differ with the findings of both the courts below.

3. The question raised by the learned Counsel for the petitioner is that this is a first offence of the petitioner and he has Parchooni shop in the village Aspur and that he may be given the benefit of probation as he is said to be about 25 years age.

4. The first question, which arises for consideration is whether the Probation of Offenders' Act can be made application to a case where the law prescribes a minimum sentence. This petitioner was working at a workable still and by virtue of Proviso to Section 54 of the Excise Act, a person in possession of a workable still for manufacturing of any excisable articles shall be punishable with minimum sentence for six months and a fine of Rs. 200/-. The question which arises is that whether in view of this minimum sentence, the Provisions of Offenders' Act can be made applicable or not. The matter was referred to a larger Bench, which has decided this question in S.B. Criminal Revision Petition No. 278/87, Jeet Mal v. The State and Ors. petitions by order dated 26th April, 1989. It has been held that the benefit of probation under the Probation of Offenders' Act, 1958 can be extended to a person convicted under Section 54(C)(D) and falling within the proviso of the section. After discussing various decisions on the point, reference was also made to the Section 18 of the Probation of Offenders' Act, which excludes operation of this Act to certain offences but the Excise Act has not been included in it. As the Division Bench has discussed this question in detail and answered it, I do not consider it necessary to discuss the same in detail.

5. The question which now arises is that whether in the facts and circumstances of this case, the petitioner should be granted the benefit of probation. The still, on which the petitioner was said to be working was not at his house but in the open and it has been contended that the petitioner is a regular shop keeper, who has

been involved in the manufacturing of illicit liquor. His age is said to be 17-18 years at the time of the incident. It can be said that this age was not given out at the time of decision before the courts below. However, it can be accepted that he was not very old at the time the still and the liquor was seized. He is a regular shopkeeper and it is expected that he would stick to his shop and not go astray again. Considering the facts and circumstances and the fact that he has not been convicted before, he can be given the benefit of probation under Section 4 of the Probation of Offenders' Act.

6. This revision petition is dismissed as far as the merits of the case are concerned. The conviction is maintained, but the sentence is set aside and it is directed that the petitioner be released on probation on his entering into a bond with one surety in the sum of Rs 3,000/- to appear and receive sentence when called upon during the period of two years and in the meantime to keep the peace and be of a good behaviour and not associate himself with illicit liquor in any manner.